Daimler Chrysler Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, (Unit 21), AFL–CIO. Cases 7–CA–46123, 7–CA–46223, and 7–CA–46857

May 31, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On December 30, 2004, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, cross-exceptions, and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order and notice as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Daimler Chrysler Corporation, Auburn Hills, Michigan, its officers, agents, successors, and assigns, shall take the actions set forth in the Order as modified below.

1. Substitute the following for paragraph 2(a) of the judge's Order.

(a) Furnish the Union, in a timely manner, the information requested in:

(i) the Union's April 3, 2003 request, Attachment 8 to the complaint, Items 1, 2, 5, and 7;

(ii) the Union's April 3, 2003 request, Attachment 23 to the complaint;

(iii) the Union's April 4, 2003 requests, Attachments 9 and 10 to the complaint;

(iv) the Union's April 4, 2003 request, Attachment 11 to the complaint, Item 1 (from January 1, 2001), and Items 2-6; and

(v) the Union's April 15, 2003 request for an audit of merit-increase and lump-sum-payment funds for the years 1999–2003.

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. May 31, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Union, United Automobile, Aerospace and Ag-

[1] The Respondent has asserted that the Union's requests for information should be deferred to the parties' contractual grievance-arbitration procedures. Under the Board's decision in *Postal Service*, 302 NLRB 767 (1991), the Sec. 8(a)(5) complaint allegations concerning failure to provide requested information are not appropriate for deferral pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971). See also *Daimler Chrysler Corp.*, 331 NLRB 1324 fn. 3 (2000), enfd. 288 F.3d 434 (D.C. Cir. 2002). Chairman Battista and Member Schaumber, if not bound by precedent, would defer. However, in the absence of a three-member Board majority to overrule current Board law, they find that the judge correctly applied the Board's policy of nondeferral in information request cases. *Pacific Bell Telephone Co.*, 344 NLRB No. 11, slip op. at 1 fn. 3 (2005).

[2] As requested by the General Counsel, we revise the judge's recommended Order and notice, consistent with Board practice, to include the specific dates of the information requests and the items to which the Respondent is ordered to respond. See *I & F Corp*., 322 NLRB 1037 (1997), enf. mem. 191 F.3d 452 (6th Cir. 1999). Contrary to the General Counsel's request, under Board practice we do not include 8(a)(5) language in the general cease-and-desist injunctive provisions in the Order and notice, and we thus deny the General Counsel's request for such language. In addition, we substitute narrow cease-and-desist language for the broad language inadvertently used by the judge in his notice, thus conforming the notice to the judge's Order.

ricultural Implement Workers of America (UAW), Local 412, AFL–CIO, by failing and refusing to provide, or failing and refusing to provide in a timely manner, requested information that is relevant and necessary to that Union as your collective-bargaining agent in Salaried Bargaining Units 4 and 21.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union in a timely manner information requested in:

(i) the Union's April 3, 2003 request, Attachment 8 to the complaint, Items 1, 2, 5, and 7;

(ii) the Union's April 3, 2003 request, Attachment 23 to the complaint;

(iii) the Union's April 4, 2003 requests, Attachments 9 and 10 to the complaint;

(iv) the Union's April 4, 2003 request, Attachment 11 to the complaint, Item 1 (from January 1, 2001), and Items 2–6; and

(v) the Union's April 15, 2003 request for an audit of merit-increase and lump-sum-payment funds for the years 1999–2003.

DAIMLER CHRYSLER CORPORATION

Richard F. Czubaj, Esq., for the General Counsel.
K. C. Hortop, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Detroit, Michigan, on October 12 and 13, 2004, pursuant to a consolidated amended complaint that issued on January 30, 2004.[1] The complaint alleges that the Respondent violated Section 8(a)(5) of the National Labor Relations Act by failing and refusing to provide, or to provide in a timely manner, relevant information in response to multiple information requests made by the Union. The Respondent's answer denies all violations of the Act. I find that that the failure to provide some of the requested information did not violate the Act, that much of the requested information was provided, albeit in an untimely manner, and that, in a limited number of instances, requested relevant information was not provided.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following:

[1] All dates are in 2003 unless otherwise indicated. The charge in Case 7–CA–46123 was filed on April 14, the charge in Case 7–CA–46223 was filed on May 12, and the charge in Case 7–CA–46857 was filed on November 17 and was amended on January 30, 2004.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, DaimlerChrysler Corporation, the Company, a corporation, is engaged in the manufacture, nonretail sale, and distribution of automobiles and automotive products at various facilities including the Detroit Axle Plant in Detroit, Michigan, from which it annually sells and ships products valued in excess of $50,000 directly to points located outside the State of Michigan. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), Local 412 (Unit 21), AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

This case involves multiple information requests by the Union in 2003 at the Company's Detroit Axle Plant in Detroit, Michigan. The employees at the Detroit Axle Plant are represented by the UAW in different locals and different units. The three requests in Case 7–CA–46123 were made in Unit 4 by Chief Steward Ameel Trabilsy, two of which relate to a grievance filed on behalf of himself. The requests in Cases 7–CA–46223 and 7–CA–46857 were made by the former Unit Chairman of Unit 21, John Balthazar. Several of the requests in Case 7–CA–46223 relate to Balthazar's termination on February 20. That case was settled, and he was reinstated. Thereafter, he was again terminated. This proceeding relates only to the information requests.

The Respondent, in its brief, argues that these cases should be deferred to the grievance and arbitration procedure provided for in the collective-bargaining agreement. "[A]n employer's refusal[s] to furnish information requested by an exclusive collective-bargaining representative are not deferrable." *DaimlerChrysler Corp.*, 331 NLRB 1324, fn. 3 (2000).

B. Case 7–CA–46123

1. Facts

Ameel Trabilsy is Chief Steward of Unit 4 which was formerly located at the Company's McGraw Glass Plant. That plant closed and employees were transferred to the Detroit Axle Plant where Trabilsy now works. Prior to working at the McGraw Glass Plant, beginning in 1991, Trabilsy had worked at the Company's Evart Glass Plant as Process Engineer. There was no Tooling Engineer at the Evart Plant. Trabilsy testified that his job duties included responsibilities for tooling. When the Evart Plant closed, Trabilsy went to the McGraw Plant as Tooling Engineer. He testified that there was no Process Engineer at McGraw and that his duties did not change. When the McGraw Plant closed and Trabilsy came to the Detroit Axle Plant, he was classified as a Tooling Engineer. Trabilsy filed a grievance in 2001 when the Company did not "count the time at

Evart towards my 10-year upgrade" to the position of Senior Engineer. That position is currently classified as Specialist.

Following the filing of the grievance, Trabilsy requested information as reflected in an exchange of e-mail messages in 2001. It does not appear that any of the requested information was provided. The denial of the grievance at the first step cites the collective-bargaining agreement, which, at subparagraph 15(f) of the Salary Classification and Grade Supplement provides that "[t]ime worked on other salary or hourly classifications, no matter how similar to the appropriate salary classification … shall not be included as time worked on the appropriate salary classification." The grievance is still pending at the second step.

On March 28, Trabilsy requested a "[l]ist of all Specialist SBU [Salaried Bargaining Unit] 2111A-17 [the numerical designator of the position] that are in the Chrysler Group for the past three years" together with the dates that the individuals identified attained "2110A0-16 Status, 2110B0 Status, and 2111A0-17 Status." Labor Relations Supervisor Tim Holland responded in writing on April 7 that the Company failed "to see the relevancy of this request" and found it "excessively burdensome." About August 14, after the charge herein was filed, Trabilsy received the information requested with respect to Specialists in his bargaining unit. Although receiving the identification of two individuals in the bargaining unit, Trabilsy testified that he did not receive the information regarding "the rest … in the corporation." There is no evidence that the Union responded to the Company's relevance or burdensomeness contentions.

On April 9, Trabilsy requested, in conjunction with his 2001 grievance, job descriptions for 16 job classifications, including the position that he held and the position to which he contended he should have been upgraded. The complaint alleges that the Company failed to provide the 14 remaining job descriptions. At the hearing, Trabilsy admitted that the Company provided 11 of those 14 descriptions. Trabilsy was told that the remaining three descriptions did not exist. He considered that to be "an unsatisfactory answer."

The 1999 collective-bargaining agreement between the UAW and the International provided, in Section 96, for merit increases and lump sum merit awards. In Unit 4, a one-time lump sum payment was made to one individual. Thereafter, Chief Steward Trabilsy was "stonewalled about any merit pays for the next three or four years for salaried bargaining unit people." Labor Relations Director Max Laventhall informed Trabilsy that the money was "spent on this one individual for a lump sum payment." Thereafter, Laventhall "agreed they were separate accounts, that he had screwed up." Trabilsy explained that the result was "for four years, our unit never got any merit pays, and that's what that [the request] was about. That money was allocated to our unit …."

On April 15, Trabilsy requested an "audit of the past four (4) years of Merit pay and Lump sum payment moneys for UAW [L]ocal 412 Unit 4 SBU employees." Trabilsy testified that he made the foregoing request because of his conversation with Laventhall in which he learned that there were two funds, one for merit pay and one for lump sum payment money under the 1999 agreement. On April 22, Supervisor Holland responded, asking the Union to "[p]lease provide specific information relative to the information being requested. The Local Union is informed in a timely manner of merit increases provided to Local 412, Unit 4 employees." On April 23, Trabilsy responded that he assumed that "an audit would consist of all moneys allocated to the funds or accounts and a[ny] disbursements of any funds along with a total accounting of all moneys into the accounts and out of same." No response was received.

2. Analysis and Concluding Findings

The Board, in *Postal Service*, 337 NLRB 820, 822 (2002), summarized precedent relating to the provision of information as follows:

> The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc.*, 272 NLRB 1128 (1984). The Board's standard, in determining which requests for information must be honored, is a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016 (1979). The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request ….

Information regarding bargaining unit personnel is presumptively relevant. "It is well established that when a union seeks information concerning matters outside of the bargaining unit, the union is required to make a showing of relevancy and necessity. See, e.g., *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), enfd. 157 F.3d 222 (3d Cir. 1998)." *Frito-Lay, Inc.*, 333 NLRB 1296 (2001).

Regarding subparagraph 10(a) of the complaint, the Union made no reply to the refusal to provide the corporate wide listing of all Specialists. Upon receiving the information relating to Specialists in the unit in August, the Union did not advise that the response was insufficient. In the absence of any communication from the Union regarding the relevance of the requested information relating to nonbargaining unit Specialists either prior to or after the partial, belated August response, I find that the Union failed to made the required showing of relevancy and necessity with regard to the information regarding nonunit personnel. The Respondent did violate Section 8(a)(5) of the Act by providing the presumptively relevant information relating to Specialists in Unit 4 in an untimely manner, some four months after it was requested.

Notwithstanding Trabilsy's dissatisfaction with the response that job descriptions for three of the classifications that the Union had identified by number did not exist, he acknowledges receiving that response. The 11 existing descriptions were provided. Whether the classifications had existed at one time or whether the Union made a typographical error in its listing is not established. There is no evidence contradicting the representation that they did not exist. The General Counsel did not establish the dates of the receipt of the descriptions or the response that three of them did not exist, thus there is no probative evidence that the foregoing information was provided in an

untimely manner. I shall recommend that subparagraph 10(b)(2) of the complaint be dismissed.[2]

Chief Steward Trabilsy responded to the Respondent's assertion of lack of relevance regarding the financial information the Union was seeking. Neither Holland nor Laventhall testified. The credible testimony of Trabilsy establishes that the Union's request related directly to the compensation of unit employees. Although not precise in an actuarial sense, Trabilsy's response to Holland clearly stated the information that the Union was seeking.

The information sought by the Union was presumptively relevant in that it would show whatever amounts were available for merit raises for unit employees or it would contradict the Union's understanding that there were separate accounts, instead of only one which had been depleted. The Respondent, by failing to provide the Union with the foregoing requested information as alleged in subparagraph 10(c) of the complaint, violated Section 8(a)(5) of the Act.

C. Case 7–CA–46223

This case involves 24 separate information requests all filed by the Union in Unit 21, and all made by Unit Chairman John Balthazar. The requests are appended to the complaint as Attachments 1-24. Each request was made to former Labor Relations Supervisor Dennis Buza. It is undisputed that the Company did not respond contemporaneously to any of the foregoing requests. On June 1, Robert Fokken replaced Buza as Labor Relations Supervisor. In June and thereafter, he responded to many of the requests that had been made to Buza and to which Buza had not responded. Counsel for the General Counsel acknowledges that many of the responses, signed "R. Fokken" and dated, were received by the Union. Counsel points out that several of the responses bear no date and are signed "Robert Fokken." Some of the undated responses are second replies to the same information request. Counsel argues that I should not credit Fokken's testimony that he did, in fact, sign the undated responses and present them to the Union. Balthazar testified on behalf of the General Counsel. The documents in question were admitted into evidence on the basis of Fokken's testimony in the course of the presentation of the Respondent's case. Although I concur that the absence of date gives rise to suspicion, Balthazar was not recalled to dispute Fokken's testimony. He did not deny receiving any of the documents that Fokken identified and testified that he signed. In the absence of any contradiction, I credit Fokken and find that the Union did receive those documents.

1. Attachments 1-7

Balthazar was discharged on February 20. The first seven of the requests, Attachments 1-7, all filed prior to February 20, seek information that was arguably relevant to that discharge and that the General Counsel argues continues to be relevant with regard to the liability of the Company for backpay to Balthazar. The foregoing requests were the subject of a prior charge, Case 7–CA–45764, that was withdrawn pursuant to an out-of-Board settlement. That settlement, involving Cases 7–CA–45764 and 7–CA–45983, provided that the Company would convert Balthazar's discharge to a disciplinary layoff and he would be reinstated, that the issue of lost wages during the disciplinary layoff would be referred to the "local parties," the Detroit Axle plant and the Union, for Special Arbitration, and that Balthazar would withdraw all unfair labor practice charges.

Pursuant to the settlement, Balthazar requested withdrawal of the charges on March 28, and, on April 4, the Regional Director approved the withdrawal requests. Although the parties, in their briefs, treat the first 11 requests (Attachments 1-11) together, only the first seven were filed prior to the settlement. Thus only those seven were subject to the settlement.

On May 12, Balthazar, as Unit Chairman of the Union, filed the charge herein alleging that, since January, the Company had failed to provide relevant information for "processing and investigating a grievance." Thereafter, on July 24, the Regional Director issued a complaint in this case, 7–CA–46223, alleging the same 24 separate instances of failure to provide information, identified by attachment number, that are now included in the consolidated complaint in this proceeding. The first seven requests, Attachments 1-7, were subject to the charge withdrawn pursuant to the terms of the out-of-Board settlement to which all parties agreed in March. On August 18, Senior Human Resources Manager Millie Fuller wrote Balthazar in his capacity as Unit Chairman, recited the terms of the settlement agreement, and stated that the Company would consider the settlement reached in March to be null and void if action was not taken to withdraw that portion of the charge in this case, 7–CA–46223, relating to the information requests made prior Balthazar's discharge. On August 21, Balthazar wrote the Regional Director attaching the letter from Fuller and noting that he had a short meeting with Fuller in which she reiterated the contents of the letter. Balthazar advised the Regional Director that he did not want to lose his job and that he was, therefore, complying with her request and did "petition … for the partial withdrawal" of the charge, i.e. the seven requests that had been filed prior to February 20 and which he had previously withdraw pursuant to the settlement. The Region did not honor Balthazar's request.

I have difficulty with the decision of the Region not to honor the request of the Union made by Balthazar, who filed the charge herein on behalf of the Union. The Region was aware of the terms of the settlement. The letter approving the withdrawal notes that the withdrawal with regard to Case 7–CA–45764 was a partial withdrawal "relating to the alleged failure to provide the union with information relevant to the discharge of John Balthazar …." The Company complied with the settlement. The Union did not make any subsequent requests for the information requested in Attachments 1-7 that had been made prior to February 20.

In *Courier-Journal*, 342 NLRB No. 118 (2004), the union and company entered into an informal settlement pursuant to which certain information was provided to the Union, and the case was closed. Thereafter, the Union discovered that the information it received was incomplete. The union made a new request for that information, which was not provided. The Re-

[2] Subparagraph 10(b)(1) of the complaint was withdrawn.

gion issued a complaint. The Board dismissed the allegation, stating:

> [T]he Union and the General Counsel are, in effect, attempting to resurrect the original dispute, which was disposed of through the settlement agreement. In our view, these actions cannot be squared with the salutary policy of affording finality to the informal settlement of such disputes. We therefore dismiss this allegation. Id. at slip op. 3.

The General Counsel, noting that the settlement herein was an out-of-Board settlement, argues that the Union "is not attempting to resurrect a matter already closed by the Board." I agree. The Union, consistent with its commitment in the settlement that provided for Balthazar's reinstatement, has not sought to resurrect anything. The Union has requested to withdraw the allegations relating to Attachments 1-7. The Region has not honored that request.

I am mindful that the Union, in obtaining Balthazar's reinstatement and withdrawing its charge relating to the failure of the Company to provide the requested information, was waiving rights afforded to it under the Act. Settlements, by their nature, involve the waiver of rights and remedies in order to obtain a result that the parties agree is mutually satisfactory. In *Textron, Inc.*, 300 NLRB 1124 (1990), the parties entered into an out-of-Board settlement in which the union agreed to a moratorium on bargaining for a period of 18 months. After the 18-month moratorium, the company conditioned entering into bargaining upon the union's agreement to a card count to establish its majority status. The Board held that, in refusing to bargain, the company had reneged upon its agreement to engage in bargaining. I concur with Member Oviatt's observation in *Textron*, that "the substantial policy favoring settlements is undermined" when a party reneges on its settlement agreement. Id at fn. 1. By failing to honor the request of the Union to withdraw the complaint allegations relating to the information requested in Attachments 1-7, the Region has permitted the Union to renege upon the terms of the agreement to which it committed itself and that the Region approved. I shall recommend that the allegations of failure to provide the information sought in Attachments 1-7 be dismissed.

2. Attachments 8-11

The parties have treated Attachments 1-11 as a group. Contrary to the General Counsel, I have found that the allegations relating to the requests in Attachments 1-7 must be dismissed. The Respondent argues that all requests that relate to the termination must be dismissed pursuant to the settlement. The Union's agreement to withdraw the prior charge pursuant to the settlement related only to those information requests filed before February 20. In agreeing to settle that charge, no commitment was made not to file additional information requests. Neither the General Counsel nor the Respondent has addressed the relevance of each specific request contained in Attachments 8-11.

Following his March reinstatement, Balthazar made several information requests. The requests in Attachments 8-11 each state that they relate to Grievance 2003-136 and possibly other grievances TBD [to be determined] at another date. Although the grievance, formerly identified as 2003-136, became Appeal Board Case E-3178 pursuant to the settlement, the Company was aware that the settlement provided for a Special Arbitration regarding pay for the period of the suspension. Senior Union Relations Specialist Brian French admitted that to rebut the Company position that the discipline was proper, Balthazar would "need information … to put his case together."

Balthazar's discipline was predicated upon his allegedly claiming pay for time not worked (time card fraud) and tardiness. Employees in the Salaried Bargaining Unit (SBU) are paid on the basis of their recording of their work time on an internal system referred to as STRS. Employees' respective supervisors approve the employees' STRS entries. Employees entering and exiting the Detroit Axle Plant have a plastic badge with a magnetic strip used to open and close access doors, and these transactions are recorded by date and time. There would be an issue if an SBU employee claimed pay when there was no record of a time card swipe showing that the employee had entered the plant or if the employee claimed pay for time after the time card swipe showed that the employee had left the plant. Balthazar testified that the entry/exit system was often inoperative.

On April 3, Balthazar, in Attachment 8, requested:

> 1. A list of all vendors/suppliers who have swipe card access to Detroit Axle Plant. ….
>
> 2. A copy of the Vendor Log ….
>
> 3. A list of all Chrysler Group facilities which have had an upgrade to the entry/exit security system in the last 36 months. ….
>
> 4. Please provide a list of all reasons for each upgrade to item 3, supra.
>
> 5. …[A] list of all bargaining unit members in the Chrysler Group who have been discharged in the last 4 years for time card fraud … by name, union, union local number and location.
>
> 6. … [A] list of all management personnel … discharged … for time card fraud.
>
> 7. …[A] list of all bargaining unit members in the Chrysler Group who have been disciplined in the last 4 years for time card fraud … by name, union, union local number and location
>
> 8. … [A] copy of any and all unpublished letters between the International union and DaimlerChrysler since September 28, 1999."

Regarding the request for a list of vendors who had swipe cards and a copy of the Vendor Log, Balthazar testified that the local "contract had provisions that called … for a vendor log." Senior Union Relations Specialist French confirmed that the Company did "keep a vendor log and there are swipes of that." He asserted that he did not see the relevance of the request because "we do not … pay off that." The current local agreement between the Union and Company, which was placed in evidence, provides that a Visitor Log (Item 21) will be maintained and that "the Unit Chairman and/or Chief Steward may review the Visitor Log upon request." In the Lines of Demarcation provision (Item 39), the parties agree that all "suppliers," who are identified as nonbargaining unit personnel performing

work at the plant, will be required "to sign the lobby sign in log" and that a copy of the log will be provided to the Unit Chairman upon request. There is no evidence that the foregoing provisions constituted a change from the prior agreement. Balthazar explained that this aspect of the request "would fall into the category of possibly other grievances to be determined at another date if … [the Company is] in violation of the [commitment to keep a] vendor log."[3] The information sought would confirm whether nonunit personnel with swipe cards were complying with the requirement in the local agreement that they sign in.

The status of security systems at other facilities has no relevance to the Detroit Axle Plant.

The request for discharges or discipline for time card fraud, the same offense of which Balthazar was accused, was clearly relevant with regard to bargaining unit employees. When seeking information regarding nonunit employees, a union must show the "relevancy and necessity" for such information. See *Public Service Electric & Gas Co.*, supra. The Union made no such showing.

Regarding the request for information relating to management, the Union did not show that the same timekeeping requirements that apply to unit personnel apply to management or otherwise establish the relevance of this request regarding nonunit management personnel.

The request for unpublished letters is incomprehensibly vague. The subject of any such letters is not specified. Insofar as a letter is a document sent to a recipient, its contents have been revealed to the recipient and thus "published" to the recipient.

The record does not establish that the information sought in paragraphs 3, 4, 6 and 8 in the foregoing request was relevant. The information requested in paragraphs 1 and 2 was relevant in that it related to compliance with the local contract. The request in paragraphs 5 and 7 regarding any unit employees disciplined or discharged for time card fraud in the past four years, the offense for which Balthazar was disciplined, was presumptively relevant.

On April 4, Balthazar made three separate requests. Attachment 9, referring to the electronic pagers used at the plant, requests "all numerical pages" and "all text pages" sent by Engineering Supervisor Pankaj Panchal to Balthazar for the period January 1, 2002, through February 20, 2003, a copy of "all correspondence, memos, notes" from Panchal to Balthazar reflecting "attempts to resolve or address any perceived tardiness problem," and "examples and instances" when Balthazar "was needed … and could not be found." The request explained that the last item referred to a statement by the plant manager that "People were looking for John [Balthazar] and he could not be found."

Attachment 10 repeats the request for examples and instances when Balthazar was needed but could not be found and additionally requests all "notes, emails, and memorandums from Pankaj Panchal which regards activities of John Balthazar" from January 2002 through December 2002.

The memorandum advising Balthazar of his discipline refers to recent conduct as well as prior warnings "in the past two years." Insofar as Balthazar's discipline related to alleged time card fraud, that is, he was being paid for time not worked, the foregoing requests relating to any occasion when he was sought but not available would be relevant. The discipline also related to tardiness, thus records of communications from Supervisor Panchal that related to tardiness would be relevant.

Attachment 11 requests 7 sets of information as follows:

> 1. [A] list of all purchase orders (PO) associated with repairs to [the] entry/exit security system for Detroit Axle Plant" … for the time period of September 1999 through present.
>
> 2. [A]ll gate rings for every member of Local 412 unit 21 … [from] from January 2003 through present. Please list entries and exits with dates.
>
> 3. [T]he start time of each unit 21 employee.
>
> 4. [T]he quitting time for each unit 21 employee for each day of item 2, supra. Include the quitting time after 8 hours.
>
> 5. [O]vertime offered to each unit 21 employee of item 2, supra.
>
> 6. [A] list of all unit 21 employees who accepted the overtime work as described in item 5, supra.
>
> 7. [A]ll gate rings for every Detroit Axle management person …. This information may show that management employees may [be] tracked differently than bargaining unit employees.

As already noted, Balthazar contended that the security system was inoperative or not operating properly. The request for information relating to repairs to that system was relevant. The discipline referred to conduct over the past two years. Thus, there would appear to be no issue regarding any dates prior to 2001. Whether the security system was working properly in 1999 or 2000 would not be relevant to the claim that it was not working properly during the period referred to in the discipline administered to Balthazar.

Insofar as the security system appears to be computerized, the failure of the computer to register entries and exits of unit employees would be relevant.

The local agreement between the Union and Company contains an Overtime Equalization provision (Item 67). The information requested regarding hours worked and overtime of unit employees was presumptively relevant regarding the Union's enforcement of the contract.

I find that the information sought in paragraph 1, from 2001 forward is relevant. I find that the information requested in paragraph 2 is relevant in that it would show whether the swipe card system was operating properly. The information requested in paragraphs 3 through 6 is relevant in that it relates to employee compensation as well as a contractual provision.

The gate rings of management personnel requested in paragraph 7 is not relevant. Unit employees are paid pursuant to the STRS system. Whether management personnel were "tracked differently" would establish nothing relating to alleged time

[3] Balthazar's additional rationale for relevance, that the log would confirm the presence of a vendor with whom he might be working, is illogical. The issue regarding Balthazar's discipline was his absence. Establishing the presence of a vendor would prove nothing.

card fraud by unit employees who are paid by the entries they make on the STRS system.

None of the information requested in Attachments 8-11 was provided. The Respondent, by failing to provide the information requested in Attachment 8, paragraphs 1 and 2 regarding vendors and the vendor log, and paragraphs 5 and 7 regarding the discharge or discipline of unit employees, Attachment 9, Attachment 10, and Attachment 11, paragraph 1 for the period after January 1, 2001, and paragraphs 2 through 6, violated Section 8(a)(5) of the Act.

3. Attachment 12

This request, made on April 7, sought information relating to security breaches at the facility during the past year. Fokken testified that he responded to this request. The response, a memorandum, addresses each aspect of the request and attaches a report of a single incident that occurred on August 1, 2003. The General Counsel argues that Fokken never actually testified that the document was given to the Union and that Balthazar testified that he did not receive any response. Balthazar testified that he did not "recall" receiving a response. Fokken testified that the memorandum, with attachment, was "in response to" the Union's request. Counsel for the General Counsel did not cross-examine Fokken about the specific details regarding delivery of the response, and Balthazar was not recalled to deny receipt of the document. Former Supervisor Buza did not respond to the request and, in view of the inclusion of the document dated August 1, Supervisor Fokken did not respond to the request for over two months after he assumed his position. I find the failure of the Respondent to provide information relating to security breaches in a timely manner violated Section 8(a)(5) of the Act.

4. Attachment 13

This request, dated April 14, relates to employee goals and performance assessments and requests the Goal Agreement and Overall Performance Assessment of Balthazar for the year 2002 as well as for all Local 412 Unit 21 members. Balthazar testified that he became aware of the existence of the Goal Agreements as a result of a conversation with Manufacturing Engineering Manager Alberto Villalon on April 14, the day of the request. Contrary to that testimony, the record reflects that, on May 15, 2002, Balthazar, under protest, signed a document titled Performance Measurement Goals and wrote, "This is violation of the national contract." He also wrote, "This has been grieved." The General Counsel contends that Balthazar received no response to this request. Although Balthazar testified that he did not receive any of the requested information, when asked whether he recalled receiving a reply in writing, he testified, "I don't believe I did. I don't believe I received this information that I was requesting." Supervisor Fokken testified that he did respond in writing. The response attaches the goal agreement which Balthazar had signed under protest on May 15, 2002. The undated response refers to a conversation between Balthazar and his supervisor, Pankaj Panchal, on April 14. Balthazar was not recalled to deny his receipt of the response and attachments.

The request of April 14 also sought the agreements and assessments of all unit personnel. Former supervisor Buza did not respond. Fokken's response, which attached Balthazar's goals and performance assessment, offers to provide the information relative to other unit members upon receipt of appropriate releases. Fokken's undated response could not have been made prior to June 1 when he became Labor Relations Supervisor, more than 7 weeks after the request was made. By failing to respond to the Union's request for relevant information regarding goal agreements and performance assessments in a timely manner, the Respondent violated Section 8(a)(5) of the Act.

5. Attachments 14-16

These information requests were made by the Union following the denial of three grievances at the first step. Each denial, prior to stating the substance of the grievance, states that "the statement in this grievance is ambiguous in its assertion … " and thereafter states the substance of the grievance and then the basis for the denial. On April 25, the Union requested substantive information relating to the facts upon which each grievance was denied. Each request also, in Item 2, asks the Company "[w]hich portion of this grievance is ambiguous …?" Fokken responded to all three requests on June 12, stating that the Company "opposed expanding the grievance procedure beyond that … in the National Contract." Thereafter, in undated memoranda, Fokken sent a further response stating that the word "ambiguous" in the respective answers should be replaced with the word "incorrect." The complaint alleges that the Company failed to respond to the request in Item 2.

If I were to find a violation predicated upon the foregoing factual scenario, the violation would be with regard to the timeliness of the Company's response. Each denial addressed the substantive issues of the respective grievances. The Union's information requests, in the items other than Item 2, sought information regarding the facts upon which the Company based its denials of the respective grievances. No refusal to provide that substantive information is alleged in the complaint. Consistent with the maxim that "the law does not concern itself with trifles," I find that carping over the descriptive language used in the response to these grievances does not rise to the level of a refusal to bargain in violation of Section 8(a)(5) of the Act. I shall recommend that these allegations be dismissed.

6. Attachment 17

The complaint alleges that the Respondent violated the Act by failing to respond to Item 4 in the foregoing request which was made on April 25. The request relates to language used in the denial of a grievance at the first step. In this instance, Manager Alberto Villalon stated that the company's actions in permitting nonunit contractors to perform work that the Union contended was bargaining unit work were "supervisors acting according to management practices." The request, in Item 4, asks that the Company "explain in detail" what Villalon meant by "management practices." As in the case of the requests regarding the use of the word ambiguous, Fokken responded on June 12 that the Company "opposed expanding the grievance procedure beyond that … in the National Contract." At some point after June 12, Fokken testified that he responded again

and, in an undated memorandum, set out the Company's explanation of management practices. Balthazar testified that he did "not believe" he received any further response. He did not, following Fokken's testimony, assert that the Union had not received the supplemental undated response. By failing to respond to the Union's request for relevant information regarding what it considered to be "management practices" in a timely manner, the Respondent violated Section 8(a)(5) of the Act.

7. Attachments 18-22

The complaint alleges that the Respondent violated the Act by failing to respond to Item 4 in the foregoing requests, all of which were made on April 25. Each request relates to a grievance regarding subcontracting that was denied by the Company. Each denial states that "[t]he present policy is for vendors and contractors to liaison with their SBU [Salaried Bargaining Unit] contacts on a regular basis." Each request for information, in Item 4, requests the Company to identify the "SBU contacts" to which the answer refers and to define what is meant by the statement, "SBU contacts on a regular basis." As in the case of the requests regarding the use of the word ambiguous, Fokken responded on June 12 that the Company "opposed expanding the grievance procedure beyond that … in the National Contract." At some point after June 12, Fokken testified that Senior Union Relations Specialist Brian French brought it to his attention that "some of our answers … need to have a little more detail." He responded again in separate undated memoranda, setting out the Company's explanation of SBU contacts. Although Balthazar testified that he received no further responses, he did not, following Fokken's testimony, dispute Fokken's testimony and assert that the Union had not received the supplemental undated responses. I credit Fokken's testimony that he sent the foregoing supplemental responses following consultation with French. By failing to respond to the Union's request for relevant information regarding what it meant by "SBU contacts" in a timely manner, the Respondent violated Section 8(a)(5) of the Act.

8. Attachment 23

On April 3, Balthazar requested information relating to the potential presence of employees in Advanced Manufacturing Engineering at the Axle Plant. Balthazar had received reports from members regarding discussion about the possibility of the Advance Manufacturing Engineering group, an autonomous bargaining unit, coming into the plant to perform work historically performed by members of Unit 21. The request, as set out in Attachment 23, seeks "the capacity in which Advance Manufacturing Engineering will work with respect to the Detroit Axle Plant and whether the work "normally done by … Unit 21" was going to be performed by others and , "[i]f so, please explain in detail." The request additionally asked whether there was an implementation date, the number of people involved and whether any person other than Unit 21 employees would be working on a full time basis. Fokken did not address this information request. Balthazar testified that he received no response to the foregoing request.

My decision regarding the failure of the Respondent to respond to this request for relevant information is complicated by a post-hearing Motion to Reopen the Record filed by the Respondent with its brief and tendering an affidavit by Manager Alberto Villalon and a document signed by him that does respond to the foregoing request. That untimely response is dated October 21. The initial request was submitted to former Labor Relations Supervisor Buza on April 3. All other responses to Balthazar's requests that were submitted to Buza are signed by Fokken. The motion gives no explanation for the Respondent's failure to have located the document prior to the hearing. Although the motion represents that the document was located "[s]hortly after the hearing," no motion was made at that time. Even if I were to grant the Respondent's motion, the delay of over 6 months in responding to the request would constitute a violation of the Act. The affidavit of Villalon states that the response, dated October 21, was "sent" to Balthazar, but it does not state when it was sent. Balthazar, who was terminated on October 29, specifically denied the receipt of any response. The General Counsel has filed an opposition to the motion. The Respondent has not shown that it was "excusably ignorant" of the existence of the document. *Fitel/Lucent Technologies, Inc.*, 326 NLRB 46, fn. 1 (1998). The motion is denied. The request for information regarding Company actions that would potentially affect members of the bargaining unit was relevant. The Respondent, by failing to provide relevant information to the Union regarding the use of Advanced Manufacturing Engineering employees at the Detroit Axle Plant as requested in Attachment 23 violated Section 8(a)(5).

9. Attachment 24

On April 10, the Union requested that the Company provide "[a]ll information regarding an inquiry by the National Highway and Traffic Safety Administration for quality related problems on products from the Detroit Axle Plant." Fokken's response, dated September 5, states that the "relationship/relevance of a NHTSA inquiry … and your representational duties" had not been established. The Union did not dispute that statement. The complaint, paragraph 19, alleges that the Respondent "dilatorily failed and refused to furnish the requested information in Attachment 24" until June 12. No document dated June 12 appears in the record with regard to this information request. The brief of the General Counsel argues that the Respondent failed to provide this relevant information. The Union did not inform the Company of the reasons it considered the requested information to be relevant after receiving the Company's September 5 response. Balthazar testified that a defective product related to health and safety. That rationale was not communicated to the Company. See *Beverly Health and Rehabilitation Services, Inc.*, 328 NLRB 959, 963 (1999). The General Counsel does not address the pleadings, which allege only a dilatory failure to provide the foregoing information. Consistent with the pleadings, I find that the Company, by not responding until almost 5 months after the foregoing request was made, responded in a dilatory manner as alleged in paragraph 19 of the complaint in violation of Section 8(a)(5) of the Act.

D. Case 7–CA–46857

This case involves 7 information requests, Attachments 25-31, made by Unit Chairman Balthazar.

1. Attachments 25 and 26

Attachment 25, dated June 6, relates to an incident involving Dan Knight, an employee of Cline Tool, who was performing work at the plant, and Attachment 26 requests information regarding the contractual commitment that Knight was fulfilling. The complaint alleges that the information was furnished in an untimely manner. The Company's responses to these two information requests are dated January 5, 2004. Although the responses state that they are amended responses, the purported initial responses do not appear in the record, and the dates of any such initial responses are not established. I find, as alleged in the complaint in paragraph 20, that the relevant information sought by the Union in the foregoing requests was not provided in a timely manner, in violation of Section 8(a)(5) of the Act.

2. Attachments 27, 28, and 29

These requests relate to information involving possible divestiture of the Detroit Axle Plant. Balthazar testified that, on August 12 when negotiating the local contract between the Company and Union, he sent to John Stellman, whom he understood to be in charge of mergers and acquisitions for the Company, an e-mail asking that he "explain all proposals which may have been revealed to you regarding the sale, merger, joint venture, divesture, separation, split or structure change occurring to the Detroit Axle Plant," together with the names of the persons revealing that information, including persons from outside companies, as well as any notes and minutes. On August 14, Balthazar sent a similar, but less extensive, request to Senior Litigation Counsel K. C. Hortop, stating that the Union "needs to know for the purposes of crafting a local agreement if the Detroit Axle Plant has been "sold, merged or any element of divesture with any entity which is not a portion of DaimlerChrysler" and whether DaimlerChrysler had any "intention" of taking any of the foregoing actions. The request asked that the Company "explain in meaningful detail" if either of the foregoing had occurred.

On August 14, Senior Manager of Human Resources Millie Fuller responded, asking that the Union "explain how the above information is relevant to the Union's representation of employees under the collective-bargaining agreement." Balthazar responded in writing on August 18 and met with Fuller on that date. The written response addresses only the request sent to Attorney Hortop and explains that the information was being requested with regard to local contract negotiations. On August 19, Fuller wrote Balthazar and denied the information stating, "Discussion concerning plant closures and/or divestiture are an item for national negotiations and are not properly discussed during local negotiations." Balthazar replied in writing that "the information is not needed to negotiate the sale or divestiture of the facility. The information … is to be used for negotiation in the local contract. A better, higher quality contract which may benefit the Union greater [greatly?] may be obtained with the information we seek." The Union received no contemporaneous response. On January 5, 2004, Fokken responded and stated that the information "has no relevance to the representation of employees under the collective-bargaining agreement."

The Respondent argues that "the issue of sale … is not an issue that is covered in the parties' local negotiations" and that Balthazar admitted that "a grievance could be filed only if the plant were to be sold." The General Counsel notes, correctly, that the Union clearly stated that the purpose of the request was "for negotiation in the local contract" with the goal of achieving "a better, higher quality contract."

The Company did not assert that the information requested regarding possible divestiture was confidential, only that it was a subject for national negotiations and was not relevant to the representation of employees under the collective-bargaining agreement. The current local agreement, in the second paragraph of Item 8, Supervisor Guidance, states: "Management recognizes the importance of maintaining open communication with the Union and will endeavor to inform the membership of pertinent issues in timely manner." I can think of few issues more pertinent than informing the Union during local contract negotiations of a potential sale, merger, or divestiture of the facility to which that local contract is to apply.

The General Counsel, in his brief, points out provisions of the local agreement such as Items 29 and 30, which deal with Job Assignment and Working Out of Classification, as obvious areas about which the parties could have negotiated if the Union had "been aware of a possibility the Respondent may have sold and/or entered into a joint venture with another entity."

I find that, at the time requested, the information sought by the Union in Attachment 28, the request sent to Attorney Hortop, was relevant. The exchanges regarding relevance related to that request, which was made subsequent to the request sent to Stellman, and the Union never raised the issue of the names of individuals or minutes requested in the e-mail to Stellman. That information would not, in any event, be relevant to the Union's stated need for the information, bargaining a better local agreement.

The local contract was completed on September 13. The only stated reason for the relevance of the information sought, negotiating the local contract, no longer exists. The information sought is now over a year out-of-date. It has no current relevance. I shall not, therefore, require the Respondent to provide the information requested on August 12, 2003. *Borgess Medical Center*, 342 NLRB No. 109, slip op. at 2-3 (2004). The Respondent, by failing and refusing to provide information relating to divestiture or potential divestiture of the Detroit Axle Plant that was, when requested, relevant, violated Section 8(a)(5) of the Act.

3. Attachments 30 and 31

On August 20, Unit Chair Balthazar received notice of pending discipline. He was discharged on October 29. Upon receiving notice of pending discipline, Balthazar, on August 20, submitted an extensive information request, Attachment 30, requesting the information upon which the Company's action was based. Additional information, as set out in Attachment 31, was sought by Balthazar on September 17. The complaint alleges that the information, although provided, was provided in an untimely manner. The record reflects that Ron Fokken formally

responded to these requests in writing on January 6, 2004. When asked whether any information had been provided before January 6, Fokken replied that it had but he could not recall what information had been provided. A letter dated October 8 from Millie Fuller refers to a letter that is not in evidence sent by Balthazar to a Mr. Lasorda, presumably an executive with the Company. The letter from Fuller reminds Balthazar that all requests for information must be made to her or the Detroit Axle Plant Labor Relations Supervisor. Although the letter asserts that Balthazar had been given "all the information the Company relied upon" in disciplining him, the nature or date of the discipline to which the letter refers is not stated, nor is the information to which Fuller referred and which he was purportedly provided delineated. Fuller did not testify.

The Respondent has not established by probative evidence that it responded to, much less fulfilled, the Union's information requests of August 20 and September 17 until January 6, 2004, over two months after Balthazar was terminated. If the information had been provided promptly, it would have been in the possession of the Union prior to Balthazar's termination and before that action became a fait accompli. By failing to promptly provide the information sought in Attachments 30 and 31, the Respondent violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to provide, and by failing and refusing to provide in a timely manner, the Union with information it requested between April 3, 2003, and September 17, 2003, as found herein, said information being relevant and necessary to the Union as the collective-bargaining representative of the employees Unit 4 and Unit 21, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having failed and refused to provide the Union with information it requested regarding an audit for the past four years of merit increase and lump sum merit award funds or accounts for Local 412, Unit 4, Salaried Bargaining Unit employees and, in Unit 21, the information requested in Attachments 8, paragraphs 1 and 2 and paragraphs 5 and 7 relating to unit personnel, 9, 10, and 11, paragraph 1 for the period after January 1, 2001, and paragraphs 2 through 6, and Attachment 23, it must promptly supply that information. The Respondent must provide only that information found to be relevant in the decision.[4]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, DaimlerChrysler Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, AFL-CIO, by failing and refusing to provide information that is relevant and necessary to that Union as the collective-bargaining representative of employees in Salaried Bargaining Units 4 and 21.

(b) Refusing to bargain collectively with the Union by failing and refusing to provide information in a timely manner that is relevant and necessary to that Union as the collective-bargaining representative of employees in Salaried Bargaining Units 4 and 21.

(c) In any like or related manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly furnish the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, AFL-CIO, with the information found to have been unlawfully withheld from it as set forth in the remedy section of this decision.

(b) Within 14 days after service by the Region, post at its Detroit Axle Plant, Detroit, Michigan, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 3, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 29, 2004

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[4] The document submitted with the Motion of the Respondent regarding the request made by the Union in Attachment 23 may be provided to the Union to fulfill this requirement.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 412, AFL-CIO, by failing and refusing to provide, or failing and refusing to provide in a timely manner, requested information that is relevant and necessary to that Union as your collective-bargaining in Salaried Bargaining Units 4 and 21.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly furnish the Union the information it requested as set forth in the remedy section of the decision.

DAIMLERCHRYSLER CORPORATION